IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.438 OF 2005

Ambrish Singh Ganga Singh Thakur... Applicant

versus

Ashok Nanji Rathod and another ... Respondents

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Mr. T.A. Thakur, for the Applicant.

Mr. S.B. Deshmukh, for Respondent No.1.

Mr. D.R. More, A.P.P., for Respondent No.2.

...

CORAM : A.M.KHANWILKAR,J.

10th February 2005

P.C.:

1. Heard Counsel for the parties. Perused the record. This application takes exception to the order passed by the Additional Sessions Judge, Greater Mumbai, dated 15th January 2005 in Bail Application No. 2031 of 2004.

2. The prosecution case is that the Respondent, along with two others, had fabricated

certain documents, namely, affidavit and power of attorney in the name of Chandu Nanji Rathod and thereafter, those documents were used in the civil proceedings instituted by the Applicant as well as others independently. Notice of Motion in the said Civil Suit was heard by the Judge of the City Civil Court, Greater Mumbai, who, after considering all the aspects of the matter, in his order dated 4th November 2004, has recorded prima facie opinion that the documents in question are not only fabricated but also used in the judicial proceedings.

3. For recording that prima facie opinion, the City Civil Court has inter alia taken into account the fact that the date on which the documents are stated to have been made, on that date, the affiant was in custody in respect of some other offence.

4. Inspite of such serious allegations, the Court below has proceeded to grant bail to the Respondent No.1, although investigation was still in progress.

5. Even on fair reading of the order, the reasons which weighed with the lower Court for granting bail to the Respondent No.1, as can be discerned, are that, the complaint is in respect of falsification of affidavit and power of attorney for which reason the pitch card was not relevant and non-production thereof will make no difference; that there is no possibility of tampering with evidence, as the documents in question are already in the custody of the Court; and that the Respondent has been interrogated and was presently in judicial custody since 27th November 2004 and his presence for the purpose of investigation was over and no purpose will be served by keeping him in custody.

6. Indeed, the last reason can be said to be relevant for considering bail application, but before that, the Court ought to have considered that investigation was still in progress and also the seriousness of the offence, in that the Applicant has been named as accused along with the other accused for falsification of affidavit and power of attorney in the name of Chandu Nanji Rathod, who was in custody at the relevant time.

As investigation regarding the allegations of fabrication of the documents, was still in progress, as is stated by the learned A.P.P.; and the offence for which the Respondent is being tried is punishable with life imprisonment; and that the nature of accusation and prima facie view already expressed by the Judge of the same Court on the Civil Side on the basis of evidence, all those aspects have not been taken into account, though relevant. (See the observations of the Apex Court in the case reported in (2004) 7 S.C.C. 521 - State of Maharashtra v. Sitaram Popat Vetal and another).

7. Accordingly, the order passed by the lower Court will have to be set aside. Ordered accordingly.

8. The Respondent No.1 to surrender before the concerned Court on or before 15th February 2005, who, in turn, will consider fresh application for bail, if filed, on its own merits in accordance with law.

9. At this stage, Counsel prays for two

weeks' time to surrender. That request is rejected.

(A.M.KHANWILKAR,J.)